

Standard terms & conditions for the design, manufacture, supply and erection of timber frame products

February 2016

Interpretation

- 1.1. If any provision of these General Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these General Conditions shall continue to be valid as to their other provisions and the remainder of the affected provision.
- 1.2. "Seller" means any party who offers to provide Goods and Services in accordance with these General Conditions.
- 1.3. "Buyer" means any party who offers to purchase Goods and services in accordance with these General Conditions.
- 1.4. "the Contract" means the Quotation by the Seller and all documents referred to therein, together with any other documents appended to the Quotation after its issue, by the Seller, to reflect any post Quotation negotiations and agreements.
- 1.5. "Date for Completion" means the date or dates specified in the Quotation or otherwise agreed in writing between the Buyer and the Seller on which the Goods are to be delivered and/or services completed at the Place of Delivery, including for the avoidance of doubt, any extension to the Date for Completion arising from any delay, or determined in accordance with the Contract.
- 1.6. "Goods and Services" means the supply of goods and services as detailed or referred to in the Quotation and the term "Goods and Services" will be interpreted accordingly.
- 1.7. "Place of Delivery" means the location for delivery of the Goods as stated in the Quotation or as otherwise agreed in writing between the Buyer and the Seller.
- 1.8. "Specification" means any document or documents prepared by the Seller relative to the design and/or construction and/or which describe the planned manner mode, method, sequence, and/or duration of the works and activities connected with the works and/or the conditions in which the works and activities connected with the works will be carried out which has/have been incorporated into the Quotation.
- 1.9. "Quotation" means the offer made in writing by the Seller to supply Goods and Services for the lump sum price, or the rates and prices stated in that offer.
- 1.10. "Price" means either (a) the lump sum price as adjusted in accordance with the Contract or (b) in the case of a Quotation based on rates and prices, the final measured quantities of the Goods and Services at the rates and prices stated in the Quotation as adjusted in accordance with the Contract.
- 1.11. "Validity Period" means the period stated in the Quotation during which the rates and prices for the supply of the Goods and Services will remain fixed in accordance with the Quotation.
- 1.12. "Valuation Date" means such date as shall be agreed in writing between the Buyer and the Seller and failing agreement the last working day in each calendar month for every interim valuation and the last working day in the relevant calendar month plus 2 weeks for valuations submitted after the Seller's Goods and Services are complete.

Basis of contract

- 2.1. By accepting the Quotation the Buyer accepts these General Conditions. Nothing proffered by the Buyer will amend or vary these General Conditions unless it has been expressly included within the Contract.
- 2.2. Unless previously withdrawn by the Seller the Quotation is open for acceptance within the period stated therein or, when no such period is so stated, within 90 days after the date of issue of the Quotation.
- 2.3. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list or acceptance of offer, invoice or other document or information issued by the Seller shall, at the Seller's election, be subject to correction without liability on the part of the Seller. If the corrected document is part of the Contract, it will be treated as if it was always included within the Contract in its corrected form.

Price of the goods

- 3.1. The rates and prices stated in the Quotation or any price subsequently submitted by the Seller are based on materials and wage rates applicable at the date of the Quotation or variation quotation on the understanding that the supply of the Goods and Services will be completed within the Validity Period. Should completion be delayed beyond the Validity Period as a result of any fault of the Buyer or any other reason outwith the control of the Seller, the Seller reserves the right to adjust the rates and prices stated in the Quotation or variation quotation in line with the increased costs of materials, labour or plant incurred by the Seller. Any such adjustment will be notified to the Buyer as soon as practicable in writing after the expiry of the Validity Period.
- 3.2. The Seller reserves the right to increase the rates and prices stated in the Quotation or any variation quotation by an amount equivalent to any additional costs, taxation or levies imposed on or affecting the cost to the Seller of providing the Goods and Services after the date of the Quotation or any variation quotation by virtue of any statute, regulations or orders issued by Government Department or any other duly constituted authority, including (without limiting the generality of the foregoing) any statutory changes in taxation of fuel required to deliver Goods.
- 3.3. A variation includes any change to the Contract, howsoever arising, whether it is driven by the Buyer, or arises as a result of something outside of the Seller's control. A variation may be instructed by the Buyer, or notified by the Seller to the Buyer, if the seller becomes aware of a variation which has not been instructed by the Buyer.
- 3.4. The Seller is not obliged to accept from the Buyer a variation to the Contract. If the Seller is prepared to accept any such variation as soon as practical after receiving full details of any such proposed variation, or if the Seller becomes aware of a variation not notified/proposed by the Buyer, the Seller, will issue a variation quotation, which may include such later time for the Date for Completion as the Seller considers reasonable. Variations will be valued by using the rates and prices detailed in the Quotation, where these are applicable; the rates and prices detailed in the quotation adjusted to take account of changes to the basis of the rates and prices where applicable and fair and reasonable rates where applicable. The Seller will not be required to implement any such variation unless the Buyer accepts the variation quotation in writing. Where not rejected in writing within 7 days, the variation quotation will be deemed accepted For the avoidance of doubt (and without prejudice to clause 4.2) where the variation consists of the omission of an element of the works, or reduction in the quantities of any Goods, the Seller will be entitled to take account of all losses and expenses that are incurred by the Seller in returning excess Goods, and/or terminating and/or renegotiating any contractual arrangements with suppliers to the Seller of any goods, materials, plant and equipment or other services that are no longer required in connection with the Goods and Services. The Seller will be entitled to payment of overheads and profit on the omitted/reduced work/Goods.

Goods and materials

- 4.1 The Seller reserves the right to alter the Specification provided such alteration does not have a materially detrimental effect on the overall performance or integrity of the Goods and Services.
- 4.2 Goods/materials are deemed to be purchased/produced on a bespoke basis and cannot be accepted for return by the Supplier.

Terms of payment

- 5.1 All rates and prices, are as stated in the Quotation, and are exclusive of Value Added Tax or any similar or other taxes, levies or duties.
- 5.2 Payments shall become due to the Seller as follows: -
 - 5.2.1 The Price shall be due as progress payments on each Valuation Date. Each progress payment shall be for a sum equivalent to the value of:
 - 5.2.1.1 Any deposit or pro-forma payment agreed by the parties.
 - 5.2.1.2 The Goods delivered and/or Services provided (on or prior to the relevant Valuation Date) to the Buyer at the Place of Delivery;
 - 5.2.1.3 All Goods that are ready for delivery to the Buyer at the Place of Delivery in accordance with any delivery date agreed by the Seller in the Quotation (or otherwise agreed) notwithstanding that the Buyer does not accept delivery of any such Goods or allow commencement or completion of the Services in circumstances where the Seller is ready to deliver such Goods and/or commence or complete the Services at the Place of Delivery, less deduction of progress payments previously made to the Seller.
- 5.3 At least 7 days prior to each Valuation Date the Seller will issue an application for payment ("Application for Payment") stating the amount due to the Seller at the payment due date and the basis on which that amount has been calculated.
- 5.4 The final date for payment of each progress payment will be 21 days after the relevant Valuation Date.
- 5.5 The Buyer shall, not later than 5 days after the Valuation Date give notice to the Seller specifying the sum that the Buyer considers to be or to have been due at the Valuation Date and the basis on which that sum is calculated. ("Payment Notice").
- 5.6 If the Buyer does not give a Payment Notice in accordance with Clause 5.5 above, then the amount due to the Seller will be the amount due that is stated in any application for payment submitted in accordance with Clause 5.3.
- 5.7 If the Buyer intends to make any deduction from any amount due to the Seller, the Buyer shall do so in writing no later than seven days before the final date for payment, stating the sum that the Buyer considers to be due on the date that the notice is served and the basis on which that sum is calculated. The notice must set out the ground or grounds on which the Buyer believes that he is entitled to deduct or withhold, the contractual and/or statutory basis for each withholding, the facts in relation to each withholding, the amount relative to each such ground and how each individual amount has been calculated. The Buyer must include with the notice copies of all documents relied upon. ("Pay Less Notice").
- 5.8 If the Buyer fails to pay any sum due to the Seller on or prior to the final date for payment and no Pay Less Notice has been given in accordance with Clause 5.7 then the Seller shall be entitled to suspend performance of any or all of its obligations under this Contract. Before doing so he will be required to give 7 days' written notice of his intention to suspend performance stating the ground or grounds on which it is intended to suspend performance. Suspension will continue until such sum has been paid in full. If the Seller has suspended performance, the Buyer shall reimburse the Seller in respect of any loss and/or expense incurred by the Seller in exercising its right to suspend, including without limitation, sums incurred during the period of the suspension and the cost of re-mobilisation on the lifting of the suspension.
- 5.9 All Goods supplied by the Seller shall remain its property until full payment of the Price and, if the Buyer fails to pay the Seller for any Goods by the final date for payment of any progress payment, the Seller shall be entitled, without prejudice to any other remedy which the Seller may have at law or otherwise, to enter the premises where the Goods are held and remove them. The Buyer shall not in any way dispose of the Goods supplied by the Seller in respect of which payment has not been received in full by the Seller.
- 5.10 Interest shall be charged on all overdue amounts from the final date when payment was due until actually made at the rate of five percent above the Bank of England base rate operating during the period of delay in payment by the Buyer.
- 5.11 Notwithstanding any other provision of this Contract the Seller may at its discretion require advance payment for Goods or Services which if supplied would cause the Buyer's credit limit with the Seller to be exceeded. In all cases credit, if offered by the Seller at all, will only be offered by the Seller subject to such security or trading references and guarantees as the Seller in its absolute discretion may require.

Delivery

- 6.1 It is a material condition of the Seller complying with any Date for Completion that the Seller has received timeously from the Buyer all information, drawings, licenses, permits and approvals necessary to enable the Seller to proceed with and complete the Goods and Services.
- 6.2 A date for completion is to incorporate periods for each of the following:
 - 6.2.1 Design
 - 6.2.2 Off-site Fabrication (Manufacture)
 - 6.2.3 Delivery and /or Erection - the Erection to be executed in such an order and manner as the Buyer and Seller agree to in writing.
- 6.3 Any Date for Completion is to be treated as an estimate only unless otherwise agreed in writing by the Seller and shall not involve any obligation on the Seller to complete the Goods and Services by a specified date.
- 6.4 The Buyer shall, at its own expense, before the estimated date of commencement of any part of the Goods and Services ensure that the Place of Delivery is ready in all respects and to the Seller's satisfaction, for the Goods to be delivered and for the Services to commence and, without prejudice to the generality of the Buyer's obligations in this respect, that all facilities and items listed in the Schedule to the Quotation have been, or will be, provided by the Buyer as and when required by the Seller in order to enable the Goods and Services to proceed.
- 6.5 The Date for Completion, assumes that the Seller will be given free and uninterrupted access to the Place of Delivery and the right to work unrestricted hours to maintain the programme.
- 6.6 The Seller is engaged in volume production and any delay caused by the Buyer during or prior to manufacture of the Goods may require the Date for Completion to be postponed to a date beyond the period of delay requested by the Buyer. The Seller reserves the right to charge the Buyer for the costs incurred by the Seller in re-programming any production or manufacturing run necessary to accommodate such delay.
- 6.7 Unless stated to the contrary in the Quotation, the Seller shall deliver Goods to the Place of Delivery on articulated lorries. The Buyer is liable for any costs resulting from access to the Place of Delivery being unsuitable. A maximum of 2 hours is included for offloading the Goods and the Seller reserves the right to charge any additional costs incurred should this time be exceeded. All pallets and packaging used during transportation will become the property of the Buyer unless specifically stated in the Quotation.

Delay to the delivery or completion

- 7.1 If, due to circumstances outside the control of the Seller, the Buyer cannot accept delivery of any of the Goods and Services on the Date for Completion, or is otherwise unable to grant access to the Seller to the Place for Delivery for the purpose of delivery of the Goods or the commencement of the Services, the Seller reserves the right to recover any costs incurred by the delay and/or to continue to manufacture Goods and deliver them to storage in accordance with Clause 8. The value of Goods not delivered as a result of delays by the Buyer or reasons outside the control of the Seller will be included in a subsequent Application for Payment.
- 7.2 The Seller shall not be liable for any delay or for any consequences of any delay in the production or delivery of any of the Goods or in the completion of the Services where the Date for Completion is an estimate as defined in 6.3. It will, however be entitled to compensation if it is delayed and/or disrupted by matters outside of its control.
- 7.3 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Goods and Services is being or is likely to be delayed due to circumstances outside the control of the Seller, the Seller shall give notice to the Buyer. If any such delay occurs then (unless the cause of the delay frustrates or renders impossible or illegal the performance of the Contract or shall otherwise discharge the parties from their obligations under the Contract) the Date for Completion shall be extended by such period (not limited to the length of such delay) as the Seller may reasonably require to complete the performance of its obligations. The Seller will advise the Buyer of the revised Date for Completion in writing as soon as possible. The Buyer will be deemed to have accepted the revised Date for Completion unless he has objected in writing within 14 days of the Seller's notice, stating valid reasons for that objection.
- 7.4 In circumstances where the Seller has agreed a Date for Completion which is not an estimated date, and the Goods and/or Services are not so delivered or completed for reasons other than those set out in clause 7.3, the Seller shall be liable to pay to the Buyer liquidated and ascertained damages in an amount equal to 0.5% of the sum in the Quotation per week of delay up to an aggregate maximum amount of 5% of the Price, or 10 weeks, whichever is the lesser amount. It is incumbent on the Buyer to mitigate costs generated as a result of any delay. The Seller shall have no other or further liability of whatsoever nature to the Buyer whether in contract or in delict/tort in respect of a failure to deliver the Goods or to complete the Services in the circumstances outlined in this clause.
- 7.5 Notwithstanding any other provision of the Contract, the Seller shall not be liable to the Buyer by way of indemnity or by reason of any breach of the Contract or statutory duty or by reason of delict/tort (including but not limited to negligence) for any loss of profit or income or for any indirect or consequential loss or damage whatsoever which may be suffered by the Buyer.
- 7.6 The Seller shall have no liability to the Buyer in respect of any loss or damage to any goods comprised in the Goods and Services whilst in transit nor in respect of any shortage in the quantity of such goods delivered unless, in the case of damage in transit or shortage in quantities, a notice in writing is given by the Buyer to the Seller within 48 hours of such receipt.

Storage

- 8.1 Where the Buyer is unable to accept delivery of all or any of the Goods on the Date for Completion, it is the responsibility of the Buyer to arrange for suitable storage at the sole cost of the Buyer. If the Seller has sufficient and appropriate facilities for those purposes it may offer to store the Goods at the Buyer's risk and expense.

Risk and property

- 9.1 All Goods shall be at the sole risk of the Buyer from the time that they are delivered to the Place of Delivery whether or not accepted by the Buyer. In the event that risk in the Goods has passed to the Buyer in accordance with the terms of the Contract then notwithstanding any other of its provisions such risk shall not in any circumstances be passed back to the Seller.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the ownership and title to the Goods shall not pass to the Buyer until the Seller has received payment in full for the price of the Goods and Services in cash or cleared funds; and the Buyer does not owe money to the Seller under this or any other contract.
- 9.3 Until such time as the ownership and title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
- 9.4 Until such time as the ownership and title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. Where Goods are attached to or incorporated in other Goods or altered by the Buyer, ownership of Goods shall not pass to the Buyer by virtue of the attachment, incorporation or alteration if the goods remain identifiable and, where attached to or incorporated in other Goods, can be detached or removed from them.
- 9.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain in the ownership of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.6 Where an erection service is provided, the Seller will satisfy reasonable sub-contract requirements with respect to Employers' Liability and Public Liability insurances. All other risks including Contractors' All Risks insurance will be provided by the Buyer.

Warranties and liabilities

- 10.1 Subject to sub clauses 10.5, 10.7, 10.8 and 10.9, the Seller hereby undertakes to make good any defects in the Goods and Services arising within one year of practical completion, (which shall mean the date on which a handover sheet is presented by the Seller to the Buyer or its Representative or the date on which the Buyer allows follow on trades to commence works, whichever is the earlier) due to any design, workmanship or materials carried out or supplied by the Seller not being in accordance with the Contract and which is not due to ordinary wear and tear or to improper use or care by any other party other than the Seller.
- 10.2 The liability of the Seller under this clause shall constitute its sole liability (save in respect of death or personal injury caused by the negligence of the Seller) whether in contract, delict/tort (including negligence) or otherwise in respect of any defects in the Goods and Services and any warranties or conditions implied by law are hereby expressly excluded to the fullest extent possible.
- 10.3 The Buyer shall not be entitled to assign the benefit of this Contract without first receiving the prior written agreement of the Seller.
- 10.4 The Buyer shall not use or permit to be used the whole or any part of the Goods supplied under this Contract before they have been completed, inspected and handed over by the Seller. If the Goods or any part of them are so used the Buyer shall indemnify the Seller against any liability that may be incurred by the Seller to any person whether arising directly or indirectly from such use.
- 10.5 Save in respect of death or personal injury caused by the negligence of the Seller it shall not, either before or after the handing over to the Buyer (in accordance with clause 12.4) of the completed Goods and Services, be liable for any loss and/or damage caused by or arising from the use of any Goods incorporated into any land or structure of the Buyer or any 3rd party and shall not, in any event, be liable for any loss arising out of any cause beyond its reasonable control.
- 10.6 The Seller reserves the right to sub-contract part or all of the provision of the Goods and Services.
- 10.7 Notwithstanding any other provision of the Contract, the Seller shall not be liable to the Buyer by way of indemnity or by reason of any breach of the Contract or statutory duty or by reason of delict/tort (including but not limited to negligence) for any loss of profit or income or for any indirect or consequential loss or damage whatsoever which may be suffered by the Buyer.
- 10.8 Any goods manufactured to the design or specification of the Buyer or his agents or to details taken off plans supplied by the Buyer are manufactured and delivered without warranty of any kind except their compliance with such design (but subject to clause 10.9) or specification. The Buyer will unconditionally, fully and effectively indemnify the Seller in respect of any claims, costs or expenses, losses or demands resulting therefrom including the infringement of any patent, copyright, design, trademark or any other industrial or intellectual property rights resulting from the Seller's use of such design or specification.
- 10.9 Where the Seller undertakes any design as part of the Services, the Seller's liability for that design will not be greater than that which would be owed by a professional design consultant supplying the same design under a contract for the supply of that design only.

Imported materials

- 11.1 The Price, where appropriate, allows for the cost of importing materials based upon the rates of exchange, tax or duty prevailing at the date of the Quotation or variation quotation as applicable. In the event of any adjustment in such rates of exchange etc, after the date of the Quotation or variation quotation as applicable, the Seller reserves the right to make an appropriate adjustment to the Price to compensate the Seller for any increased cost.

Supply of on-site services (where included in quotation)

- 12.1 The supply of the Services at the Place of Delivery shall be governed by the following conditions and the attached Schedule of Attendances.
- 12.2 The Buyer will ensure that the foundation works at the Place of Delivery upon which the Goods are to be erected are completed and fit for purpose in accordance with the dimensions and specifications contained in the relevant plans, drawings and specifications at least 5 working days prior to the commencement of the Services at the Place of Delivery.
- 12.3 The Services shall be carried out in a proper and workmanlike manner in accordance with the Health and Safety Plan, Method Statements, Risk Assessments and site-specific requirements as incorporated into the Quotation.

Prevention or frustration

- 13.1 If the Contract becomes impossible to perform or is otherwise frustrated the Buyer shall be liable to pay the Seller all reasonable costs, expenses, overheads and all loss of profit which the Seller, his suppliers or sub-contractors incur as a result of such frustration or impossibility of performance.

Patents and intellectual property rights

- 14.1 The Buyer warrants that any design or instruction furnished or given by him shall not cause the Seller to infringe any letter patent, registered design or trademark in the execution of the Goods and Services, nor have an adverse impact on any intellectual property rights.
- 14.2 The exclusive property and copyright in all designs and documents produced by the Seller in connection with the Contract (whether before, on or after the date thereof) is fully reserved and remains exclusively the property of the Seller and it is acknowledged that such documents are supplied to the Buyer in confidence for the sole purpose of the Contract. It is an express condition of the Contract that the contents of such documents (or any part of them) shall not be used or communicated in any manner to any other person, firm or company without the Seller's prior written consent and shall not be used by the Buyer other than for the purposes of the Contract.

Determination

- 15.1 The Seller shall be entitled to determine its employment under the Contract where:
- 15.1.1 The Buyer is in material or continuing breach of any of its obligations (including any obligation to pay any sums due to the Seller) under the Contract and fails to remedy such breach within 7 days of the receipt of written notification from the Seller of such breach; and/or
- 15.1.2 The Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or a receiver or administrative receiver is appointed over the whole or a substantial part of the assets and undertaking of the Buyer, or an encumbrancer otherwise takes such possession of, any property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business or the Buyer generally becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 15.2 The Seller shall in both such circumstances prepare and submit to the Buyer within 14 days of the date of determination, an account setting out the total value of the Goods and Services supplied inclusive of design, manufacture and erection costs (as the case may be), together with any sums due to the Seller arising out of or in connection with the termination, and any other sums which are due pursuant to this Contract, less deduction of all sums previously paid to the Seller by the Buyer.
- 15.3 The date of receipt of the account by the Buyer will be deemed a Valuation Date for the purposes of payment and the payment terms set out at Clause 5 will apply.

Law applicable

- 16.1 The Contract shall be governed by and be construed in accordance with the laws of England and Wales unless the Place of Delivery is within Scotland, in which case the laws of Scotland will apply.

Arbitration

- 17.1 Any dispute or difference arising out of or in connection with this Contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators. The seat of the arbitration shall be England and Wales.

Adjudication

- 18.1 If any dispute or difference, arises under the Contract at any time, either party may refer it to adjudication in accordance with the following procedure which is intended to comply with the Housing, Grants, Construction and Regeneration Act 1996 ("the Construction Act").
- 18.2 The person ("Adjudicator") to decide the dispute or difference shall be either an individual agreed by the parties or, on the application of either party, an individual to be nominated as the Adjudicator by the Chairman or acting Chairman of the Royal Institute of British Architects unless the Place of Delivery is within Scotland in which case nomination shall be by the Chairman or acting Chairman of the Royal Institution of Chartered Surveyors in Scotland ("the nominator"). Provided that where either party has given notice of his intention to refer a dispute or difference to adjudication then.
- 18.2.1 Any agreement by the parties on the appointment of an adjudicator must be reached with the object of securing the appointment of, and the referral of the dispute or difference to, the Adjudicator within 7 days of the date of the notice of intention to refer.
- 18.2.2 Any application to the nominator must be made with the object of securing the appointment of, and the referral of the dispute or difference to, the Adjudicator within 7 days of the date of the notice of intention to refer.

- 18.3 If the Adjudicator dies or becomes ill or is unavailable for some other cause and is thus unable to adjudicate on a dispute or difference referred to him, then either the parties may agree upon an individual to replace the Adjudicator or either party may apply to the nominator for the nomination of a new Adjudicator to adjudicate that dispute or difference.
- 18.4 When a party requires a dispute or difference to be referred to adjudication ("the Referring Party") then the Referring Party shall give notice to the other party of his intention to refer the dispute or difference, briefly identified in the notice, to adjudication. If an Adjudicator is agreed or appointed within 7 days of the notice then the Referring Party shall refer the dispute or difference to the Adjudicator ("the referral") within 7 days of the notice. If an Adjudicator is not agreed or appointed within 7 days of the notice of the referral then the referral shall be made immediately on the Adjudicator being agreed or appointed. The Referring Party shall include with the referral particulars of the dispute or difference together with a summary of the contentions on which he relies, a statement of the relief or remedy, which is sought, and any material he wishes the Adjudicator to consider. The referral shall be copied simultaneously to the other party.
- 18.5 The referral to the Adjudicator and the copies thereof to be provided to the other party shall be given by actual delivery, by email, by facsimile or by special delivery or recorded delivery. If given by facsimile or email, then, for record purposes, the referral must forthwith be sent by first class post or given by actual delivery.
- 18.6 The Adjudicator shall upon receipt of the referral confirm the date of that receipt to the parties.
- 18.7 The party not making the referral ("the Responding Party") may, by the same means stated in clause 17.4, send to the Adjudicator within 7 days of the date of the referral, with a copy to the Referring Party, a written statement of the contentions on which he relies and any materials he wishes the Adjudicator to consider.
- 18.8 The Adjudicator shall within 28 days of the referral and acting as an Adjudicator for the purposes of S.108 of the Housing Grants, Construction and Regeneration Act 1996 and not as an expert or an arbitrator reach his decision and forthwith send that decision in writing to the parties. Provided that the period of 28 days within which to reach his decision may be extended by up to 14 days with the consent of the Referring Party alone, or, extended by such a longer period as both of the parties may agree.
- 18.9 The Adjudicator shall be obliged to give reasons for his decision in writing within the time specified for reaching his decision.
- 18.10 In reaching his decision the Adjudicator shall act impartially and set down his own procedure; and may take the initiative in ascertaining the facts and the law.
- 18.11 The Adjudicator may by direction determine the apportionment between the parties of liability for his fees and expenses.
- 18.12 The Adjudicator may, within a reasonable time of issuing his Decision, correct his Decision so as to remove any clerical or typographical error arising by accident or omission.
- 18.13 The decision of the Adjudicator shall be binding on the parties until the dispute is otherwise finally determined by legal proceedings or by agreement.
- 18.14 The Adjudicator will not be liable for anything done or omitted in discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected from such liability.

Entire agreement

- 19.1 The Contract constitutes the entire agreement between the Buyer and the Seller. It supersedes any previous agreement (whether written or oral) between the parties. The parties have not relied on any representations, including pre-contractual representations, other than those which are set out in the Contract. This clause does not exclude liability for fraud.

Exclusions

- 20.1 The Quotation excludes the following items, in addition to those specified in the Schedule of Attendances:
- 20.1.1 Those specified in the Quotation which, unless agreed in writing, it shall be the Buyer's responsibility to provide to the Seller's requirement.
- 20.1.2 Whilst the Seller will endeavour to comply with all relevant statutory provisions and Codes of Practice applicable to the provision by the Seller of the Goods and Services, the Seller will have no responsibility to obtain any consents or permissions necessary for the supply of the Goods and Services.
- 20.1.3 Builder's work in connection with plumbing, heating & ventilation and other mechanical and electrical services including notching and holing for cable, pipe runs, flue, vents and the like.
- 20.1.4 Any costs incurred by the Seller associated with the production and issue to any party on the instructions of the Buyer of structural calculations relating to the Goods and Services.
- 20.1.5 The provision of a Collateral Warranty Agreement, unless otherwise agreed in the Quotation. In the event that a Collateral Warranty is to be provided as per the Quotation, it is on the basis that
- 20.1.5.1 The wording is in a form that is agreeable to the Seller.
- 20.1.5.2 It will not be valid unless and until the agreed final application has been paid in full.
- 20.1.6 The provision of a Performance Bond unless otherwise agreed in the Quotation. In the event that a Performance Bond is provided for by the Quotation, it shall guarantee secondary obligations only and not be an on demand bond.

Schedule of attendances and facilities to be provided by the buyer

- 21.1 The following attendances and facilities shall be provided and maintained at all times for the duration of and in relation to the provision of the Services at the Place of Delivery, free of charge and in a manner so as not to disrupt or restrict the regular progress of the Services and in compliance with the relevant current Health and Safety at Works requirements and legislation:
- 21.1.1 Any hoisting, craneage, forklifts or plant requirements of any kind required for the unloading, distribution or erection of the structure, together with skilled and qualified operatives as appropriate unless specifically incorporated within the quotation.
- 21.1.2 Labour and plant for unloading, checking and distribution of any materials supplied which do not form part of the structural erection.
- 21.1.3 Scaffolding and any other item necessary for access or roof edge protection etc. which is required to meet with HSE statutory requirements and which may require to be altered during the progress of the Services. The external scaffolding must be erected prior to the delivery of the Goods.
- 21.1.4 Fall/arrest, soft landing systems, nets, harnesses, etc. to be supplied and moved as and when necessary for the execution of the Services.
- 21.1.5 Suitable hard standing and clear access to all sides of the structure to permit access and for cranes etc. to operate and free from obstruction such as overhead cables, power lines, trees and other similar obstructions.

- 21.1.6 110-volt power supply adjacent to the works and all temporary lighting.
- 21.1.7 Messing, canteen, first-aid and welfare facilities including drying facilities.
- 21.1.8 Secure, lock fast container for tools and sundry materials.
- 21.1.9 Skips or the like placed immediately adjacent to and at the same level as the working area for the removal of rubbish and debris off site including tipping charges.
- 21.1.10 Protection of the works where taken over by other trades or contractors or where the Seller has left the site.
- 21.1.11 Provision of security (including security personnel) to safeguard the plant, equipment and the Goods.
- 21.1.12 Telephone/fax facilities.
- 21.1.13 Compliance with the Principal Contractor duties referred to within the document "16 Steps to Fire Safety" produced by the STA.

Disclaimer

Whilst the Structural Timber Association is publishing these terms and conditions for the guidance and assistance of its Members, it is not thereby warranting or representing that these are appropriate terms and conditions in all circumstances for all Members. Members should be advised to seek their own legal advice on the appropriateness of these terms and conditions for use in any particular circumstances.

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